

**Pt. 30**

**49 CFR Subtitle A (10-1-02 Edition)**

the identification number(s) of each affected grant.

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**PART 30—DENIAL OF PUBLIC WORKS CONTRACTS TO SUPPLIERS OF GOODS AND SERVICES OF COUNTRIES THAT DENY PROCUREMENT MARKET ACCESS TO U.S. CONTRACTORS**

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AUTHORITY: 49 U.S.C. 322(a); Containing Resolution on the Fiscal Year 1988 Budget 109(a), Pub. L. 100-202; Airport and Airways Safety and Capacity Expansion Act of 1987, 115, Pub. L. 100-223.

SOURCE: 53 FR 19916, June 1, 1988, unless otherwise noted.

**§ 30.1 Purpose.**

The rules in this part implement section 109(a) of the Continuing Resolution on the Fiscal Year 1988 Budget, Public Law No. 100-202 (signed December 22, 1987) [the Continuing Resolution], and section 115 of the Airport and Airways Safety and Capacity Expansion Act of 1987, Public Law No. 100-223 (signed December 30, 1987) [the Airport Safety Act]. These rules are intended to give uniform implementation to these statutes throughout DOT procurement and grant programs.

**§ 30.3 Applicability.**

(a) The restrictions imposed by section 109(a) of the Continuing Resolution extend to all DOT agencies as well as all recipients of DOT funds. The restrictions apply to all projects for which funds are obligated or contracts or subcontracts are awarded during fiscal year 1988, including projects and contracts under all DOT financial assistance programs. The prohibition applies to public buildings and public

works projects everywhere in the United States or any territory or possession of the United States. U.S. overseas bases, installations, and embassies are not subject to this part.

(b) The restrictions imposed by section 115 of the Airport Safety Act extend to all projects for which funds are made available by that Act, whether or not the contracts are awarded during fiscal year 1988. The restrictions apply to all contracts entered into under grants authorized by the Airport Safety Act.

(c) This part applies to projects covered by section 109(a) of the Continuing Resolution, section 115 of the Airport Safety Act, or both. Whether one or the other statute or both apply, the effect on the project shall be the same, subject to paragraph (e) of this section.

(d) In addition to construction, alteration, and repair contracts, the restrictions of this part cover all architect, engineering, and other services related to the preparation and performance of construction, alteration, and repair of public projects and public works.

(e) The restrictions of this part also apply to all products used in the construction, alteration, or repair of public projects and public works; *Provided, however, That*

(1) The restrictions of this part do not apply to construction equipment or vehicles that do not become part of a delivered structure, product, or project and

(2) Notwithstanding paragraph (c) of this section, the restrictions of section 109(a) of the Continuing Resolution do not apply to vehicles to be used by the project, including, but not limited to, buses, trucks, automobiles, rail rolling stock, and aircraft.

**§ 30.5 Effective dates.**

The provisions of section 109(a) of the Continuing Resolution apply to contracts (or new subcontracts under existing contracts, whether or not subject to the restriction) entered into after December 22, 1987, its date of enactment, and before October 1, 1988. The provisions of section 115 of the Airport Safety Act apply to contracts funded by the Act and entered into

after December 30, 1987, its date of enactment; the restrictions remain effective so long as money provided by the Airport Safety Act is used. Accordingly, any contracts or subcontracts subject to the restrictions of this part entered into with contractors or subcontractors owned or controlled by citizens of subject countries, as defined by §§30.7 and 30.9 of this part, since December 22, 1987 shall be canceled at no cost to the Government, subject to the waiver provisions of §30.17 of this part. All public works or public buildings contracts entered into after December 22, 1987, shall include, or be modified to include, a provision prohibiting subcontracting with citizens of subject countries, as defined by §§30.7 and 30.9 of this part.

#### § 30.7 Definitions.

(a) *Funds appropriated for FY 1988 by this resolution or any other law*, as used in this part with reference to section 109(a) of the Continuing Resolution, means all appropriated and trust funds available to DOT, its modal administration, or their grantees for expenditure or obligation in fiscal year 1988, regardless of the fiscal year in which the funds were appropriated.

(b) *Funds made available by this Act*, as used in this part with reference to section 115(a) of the Airport Safety Act, means all funds, including trust funds, made available to DOT, its modal administrations, or their grantees by that Act, whether or not the contracts to be funded are awarded during fiscal year 1988.

(c) *Contractor and subcontractor* means any person, other than a supplier of products, performing any architectural, engineering, or other service directly related to the preparation for or performance of the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States.

(d) *Contractor or subcontractor of a foreign country* means any contractor or subcontractor that is a citizen or national of a foreign country, or is controlled directly or indirectly by one or more citizens or nationals of a foreign country.

(e) *Service of a foreign country* means any service provided by a person that is a citizen or national of a foreign country, or is controlled by one or more citizens or nationals of a foreign country.

(f) *Product of a foreign country* means construction materials, i.e., articles, materials, and supplies brought to the construction site for incorporation into the public works project. A product is considered to have been produced in a foreign country if more than fifty percent of the total cost of the product is allocable to production or manufacture in the foreign country.

(g) *Foreign country* means a country included in the list of countries that discriminate against U.S. firms published by the U.S.T.R.

#### § 30.9 Citizenship: Direct or indirect control.

A contractor, subcontractor, or person providing a service shall be considered to be a citizen or national of a foreign country, or controlled directly or indirectly by citizens or nationals of a foreign country, within the meaning of this part.

(a) If 50 percent or more of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

(b) If the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligation in favor of one or more citizens or nationals of the foreign country;

(c) If 50 percent or more of the voting power in the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(d) In the case of a partnership, if any general partner is a citizen or national of the foreign country;

(e) In the case of a corporation, if the number of its directors necessary to constitute a quorum are citizens of the foreign country or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(f) In the case of a contractor or subcontractor that is a joint venture, if